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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/810,126

03/26/2004

Norman I. Bruckner

8823

7590

07/27/2006

NORMAN I. BRUCKNER
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EXAMINER

HUI, SAN MING R

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/810,126

Applicant(s)

BRUCKNER ET AL.

Examiner

San-ming Hui

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-6 and 10-14.
Claim(s) withdrawn from consideration: 7-9 and 15-17.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____.
13. ☐ Other: _____.


San-ming Hui
Primary Examiner
Art Unit: 1617

Continuation of 3. NOTE: The proposed amendments filed May 10, 2006 recite limitations that are not presented in the claims before, and thus change the scope of the claims. Changing the scope of the claims as such would raise new issue and considerations for the examiner. Therefore the proposed amendments filed May 10, 2006 will not be entered.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed May 10, 2006 with regard to the restriction requirements have been considered, but are not found persuasive. Firstly, the method claims that were subjected to the restriction recite a method of sterilization by using the composition of the instant invention. The basis for the patentable distinctness of the two inventions identified is that the method of sterilization can be practiced with a materially different product than the one is claimed. Such product can be, for example, bleach, which is not a high level disinfectant. The point is by showing the method of sterilization can be practiced with other product, i.e., not a high level disinfectant, the two invention as identified in the restriction requirements mailed July 1, 2005 are patentably distinct to each other. In other words, citing an example that is NOT a high level disinfectant is precisely and succinctly meeting the requirements for showing patentably distinct inventions as claimed. Secondly, the search field is not overlapped. The cited prior arts merely teaches the field of disinfection, not sterilization. Even the cited prior arts are employing the "auxiliary" agents for both disinfecting and sterilizing composition. The herein claimed active is not taught as sterilizing agents. The search for the herein claimed agents killing or eradicating other microorganisms other than pathogens will seem to be not coincide with the search for disinfectants.

Applicant's arguments filed May 10, 2006 averring the cited prior arts' failure to provide motivation to combine have been considered, but are not found persuasive. The cited prior arts clearly teaches the herein claimed active as a disinfectant. The secondary references teaches the herein claimed auxiliary agents are well-known for disinfecting composition including those containing aldehyde. Therefore, absent evidence to the contrary, one of ordinary skill in the art would have been motivated to combine or incorporate the well-known auxiliary agents with malealdehyde to form an effective disinfecting composition. Application states that Hoover teaches hydroquinone is required. Examiner respectfully disagree. In col. 1, lines 51-52, states, in some cases, hydroquinone was added to inhibit polymerization. Examiner notes that only in some cases should hydroquinone is added. Thus, hydroquinone is NOT required, contrary to what applicant asserted.

Applicant's arguments filed May 10, 2006 averring the cited prior art's failure to teach or suggest a high level disinfecting composition have been considered, but are not found persuasive. Examiner notes that the cited prior arts teach the herein claimed agent. The properties and the product is inseparable. Therefore, if the cited prior art teaches the same compounds, the recited properties of the composition containing the same agent must be present in the cited prior arts composition.

Applicant's arguments filed May 10, 2006 in pages 13-14 averring the cited prior arts' failure to teach or suggest a composition suitable for medical use have been considered, but are not found persuasive. The arguments are directed to intended use of the recited composition. The intended use does not lend any patentable weight to the claims directed to composition.

No unanswered arguments are seen to be present herein.